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August 3, 1999

VIA HAND DELIVERY

Jennifer G. MacDonald, Esq.
Assistant Regional Counsel
Environmental Protection Agency
Office of Regional Counsel
United States Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

Re: **Container Properties, L.L.C./Rhodia, Inc.**

Dear Ms. MacDonald:

As my telephone message indicated, Container Properties is very concerned about the comments provided by Ms. Bailey and the fact that our consultants' work is of unacceptable quality. As indicated above, we are taking all steps possible to remedy this situation. You should be aware, however, that in early 1998 representatives of Container Properties, RCIE and AGI met with Rene Fuentes and Sylvia Burges, in order to identify EPA's concerns regarding the earlier versions of the Risk Assessment/Media Cleanup Standards Evaluation produced by Rhodia. Representatives of Container Properties, RCIE and AGI came away from that meeting under the belief (now we recognize the mistaken belief) that the Risk Assessment/Media Cleanup Standards Evaluation provided by Rhodia in 1997 was essentially acceptable to the EPA and that only minor revisions needed to be made. This belief was strengthened by a letter received on March 2, 1998 from Sylvia Burges to Edwin Liu containing a set of comments from Marcia Bailey and Rene Fuentes.

AGI was under the impression that the later comments provided in December of 1998, while more comprehensive, were reflected in the March 2, 1998 letter and, thus, focussed on those comments. Unfortunately, however, the comments between March 1998 and December 1998 became more comprehensive. During this time period, conversations were also taking place between representatives of Container Properties, RCIE and the EPA, which AGI interpreted as EPA willingness to accept a less comprehensive Risk Assessment/Media Cleanup Standards Evaluation than AGI would normally produce. For instance, despite the promulgation of Region 10's RCRA Risk Assessment Guidance in early 1998, no mention was ever made of that report either in the March 21, 1998 letter, the December 1998 comments, or the conversations between the EPA and AGI. Apparently, while AGI was aware of the 1998 Guidance, it assumed that most of the

provisions would not apply to this Risk Assessment, unless those provisions were identical to some of the comments provided in March 1998.

Container Properties interviewed several consultants before selecting AGI. Container Properties believed and continues to believe that AGI is a reputable consulting firm. We understand that AGI has successfully worked closely with the EPA on other projects and we had hoped that this same good relationship continue with regard to this site. As you recall, Container Properties purchased this site for two reasons. First, to ensure that the Container Properties' business could continue and that we could continue to provide employment for the sixty individuals that worked at the site. Second, because Container Properties felt that it could avoid some of the apparent problems which developed as a result of Rhodia and Rhone-Poulenc's action *vis-à-vis* the EPA.

Since our client's business was located on the site, the disagreements between the EPA and Rhodia negatively impacted our client's business. As we mentioned with regard to the Groundwater Monitoring Plan and the Tidal Study, AGI has been instructed to respond to each of the comments contained in Marcia Bailey's memo regarding the Risk Assessment/Media Cleanup Standards Evaluation, and do everything requested by the EPA.

The comments prepared by the EPA are very technical and involve issues to which our client is not personally capable of responding. For that reason, Container Properties relied upon AGI. Container Properties has made a good faith effort to ensure that all of the submittals to the EPA are consistent with the requirements of the EPA. We now recognize that AGI seemed to be operating with the belief that the EPA would not require the full Risk Assessment and investigation at this site that would be required of other sites. Due to the technical nature of the issues, our client did not recognize that AGI was wrong. We apologize for this oversight. We have now instructed AGI to correct this misperception, and are committed to ensuring that AGI meet all of the EPA requirements.

We have also requested that AGI use the resources of the EPA and its staff to resolve any ambiguities or questions. Given our client's good faith efforts and what appears to be some misunderstanding, we respectfully request that the EPA not impose stipulated penalties as a result of what was submitted on March 8, 1999.

We would also like to point out that while the EPA had similar concerns with regard to the Tidal Study and Groundwater Monitoring Plan, all three of the submissions had been turned in before the EPA identified the problems experienced by AGI. We, therefore, did not have an opportunity to revise the Draft Risk Assessment/Media Cleanup Standards Evaluation after receiving the EPA comments on the other two documents. Finally, the EPA comments on the Risk Assessment/Cleanup Media Standards Evaluation ask our client to consider several new studies, including the King County Combined Sewer Overflow Quality Assessment of the Duwamish River at Elliot Bay, the Asian and Pacific Islander Seafood Consumption Study in King County, and the Weston Report. These were not available when we submitted our document on March 8, 1999, or had just become available.

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We attempted to address each of the comments made by the EPA with regard to the Tidal Study and the Groundwater Monitoring Plan and provide all of the information requested. We intend to do the same with the Risk Assessment/Medial Cleanup Standards Evaluation. We therefore ask that the EPA not impose stipulated penalties at this time.

If you have any questions, please do not hesitate to give us a call.

Very truly yours,

CARNEY BADLEY SMITH & SPELLMAN, P.S.



Donald J. Verfurth

DJV:em
Enclosure

cc: ✓ Christy Brown
Randall F. Smith
Peter Wold